In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

NO. 71-1311

DOROTHY SCHWARTZ,

Petitioner,

vs.

THE JEWISH HOSPITAL ASSOCIATION OF CINCINNATI,

Respondent.

BRIEF IN OPPOSITION TO MOTION TO CERTIFY

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STATEMENT OF THE CASE

Petitioner was an invitee on the premises of the Jewish Hospital, having accompanied her sister-in-law who sought hospital service. The evidence adduced as to the occurrence of the accident differed materially on each side. Petitioner contended that having opened the door which leads into the physiotherapy room to allow her sister-in-law to enter that room, she was standing in the doorway with part of her body projecting into the hall and while in that position was struck by a laundry cart pushed through the hallway by a hospital employee. The respondent contended that petitioner was not standing in the door way but had entered the hall from the physiotherapy room,

turned to the right in the hallway, took several steps toward the approaching cart and then with her eyes downward walked into it.

JURISDICTIONAL STATEMENT

Respondent follows the numbering and comments on the statements of the petitioner as follows:

(1) The record introduced was the record of the Jewish Hospital. Printed on the face of it were the words The Jewish Hospital. Both the petitioner and the respondent were of the same religious faith. The jury in the inception of the case from the caption of it were aware of the religious affiliation of the Jewish Hospital. They became aware of the religion of the petitioner by reason of the usual questions on the admission sheet.

(2) The Hospital record contained an inaccurate description of the accident, which neither party contended was a correct account. The inquiry of the jury as to the testimony of Miss Schwartz and Mr. White shows that they placed no reliance on this account.

(3) The Court of Appeals did pass upon every error assigned as their opinion clearly shows.

(4) The Supreme Court of Ohio refused to certify on the ground that the case did not involve any question of public or great general interest and no constitutional question was involved.

ARGUMENT

In common with other hospitals in this vicinity, the Jewish Hospital makes up a face sheet for each patient as a part of the record. This sheet is captioned at the top in print The Jewish Hospital. There are several lines

below the caption wherein are entered the plaintiff's name and address, the date of her entrance, the date of her birth, the names of the next of kin and her religion. These items of identification are followed by a brief statement of the reason for admission. The face sheet is a part of the entire record which is made and kept in the ordinary course of business. The hospital record was admitted on the question of injury sustained. No objection was made to its admission because of religious grounds, and not one word was uttered by anyone at the time concerning the religious origin and connections of the hospital or the petitioner's religion. There was no injection of religious prejudice into the case in any manner whatever.

The brief description of the accident was a part of the hospital record. That description of the accident was not urged by the respondent as a true account. It was totally at variance with both the petitioner's contentions and those of the respondent. No reliance was placed upon it by anyone, nor was it urged as true by either side. That the jury accepted the statements of both counsel and placed no reliance upon the report is shown by their interest in having the testimony of the plaintiff and that of Mr. White, who was pushing the cart, read back to them during their deliberations concerning their respective versions of the occurrence. The description of the accident in the hospital report agreed with neither the petitioner's version of the accident nor that of the hospital.

A reading of the opinion of the Court of Appeals shows clearly that that court considered and passed upon every error assigned, numbering the errors commented upon as they appeared in the brief.

There being no question of public or great general interest involved, the Supreme Court of Ohio properly refused to certify.

Petitioner had a fair trial, and a thorough review on appeal in a cause in which there was a factual question presented to the trier of the facts. There was no prejudice injected by anyone.

Respectfully submitted,

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On Petition for a Writ of Certiorari to the Supreme Court of the State of Ohio

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

1. The Respondent in its Opposing Memorandum states that the Petitioner, Dorothy Schwartz, and The Jewish Hospital Association of Cincinnati were of the same religious faith. This could not possibly be true. The Jewish Hospital Association is a corporation and hardly capable of having a religious faith. It is not in any way associated with the Jewish religion except for the fact that its Board of Trustees is predominantly made up of men who profess the Jewish religion. Robert Carney, its Director is Non-Jewish and as has been pointed out, it is largely a community hospital related to people of all religious faiths. It is difficult to believe that religious freedom is relative and self-limiting, and the Constitutional guarantee